

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN

JERMAINE D. BRISTER,

Plaintiff,

Case No. 22-cv-267-pp

v.

DENIS MCDONOUGH,
Secretary of Veterans Affairs,

Defendant.

**ORDER DISMISSING CASE WITHOUT PREJUDICE UNDER FEDERAL RULE
OF CIVIL PROCEDURE 4(m) AND CIVIL LOCAL RULE 41(b)**

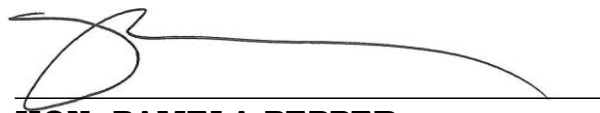
On March 2, 2022, the plaintiff—represented by Attorney Shannon McDonald of the law firm of McDonald & Kloth, LLC in Menomonee Falls, Wisconsin—filed a complaint alleging that the defendant violated Section 504 of the Rehabilitation Act. Dkt. No. 1. The clerk’s office issued a summons the following day. On July 6, 2023, the court issued an order, observing that the defendant had not answered or otherwise responded to the complaint and that the plaintiff had not sought a default or moved for a default judgment, and had failed to file any proof of service. Dkt. No. 3. The court ordered that by the end of the day on July 28, 2023, the plaintiff must file a written document showing cause as to why the court should not dismiss the case without prejudice under Federal Rule of Civil Procedure 4(m) and Civil Local Rule 41(b) (E.D. Wis.). Id. at 2. The court ordered that if the plaintiff did not show written cause by the end of the day on July 28, 2023, it would dismiss the case the next business day without further notice or hearing. Id. at 2.

Rule 4(m) states that if a defendant is not served within ninety days after the complaint is filed, the court—whether on its own motion or after notice to the plaintiff—“must dismiss the action without prejudice against that defendant or order that service be made within a specific time.” The plaintiff, through counsel, filed the complaint one year and five months ago. There is no evidence that the plaintiff has served the defendant. Almost a month ago, the court gave the plaintiff the opportunity to show cause why the court should not dismiss the complaint. That order was served electronically on counsel Shannon McDonald. The McDonald & Kloth website indicates that the firm continues to operate. <https://themklaw.com/business-lawyers/>. The Wisconsin Bar Association shows that Attorney McDonald remains counsel in good standing and it reflects the email address to which the court sent the July 6, 2023 order. The July 28, 2023 deadline has passed and the plaintiff has not filed a written explanation showing cause why the case should not be dismissed (or had any other contact with the court).

As the court said it would do in its July 6, 2023 order, the court **ORDERS** that the case is **DISMISSED WITHOUT PREJUDICE** under Federal Rule of Civil Procedure 4(m) for failure to serve process on the defendant and under Civil Local Rule 41(b) for lack of prosecution. The clerk will enter judgment accordingly.

Dated in Milwaukee, Wisconsin this 31st day of July, 2023.

BY THE COURT:



HON. PAMELA PEPPER
Chief United States District Judge